

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

LANCE SCHOENING,

Plaintiff,

v.

ROBERT M. McKENNA,

Defendant.

Case No. C07-5611 RBL

ORDER DISSOLVING STAY

THIS MATTER comes before the Court on Defendant Robert McKenna's Motion for Order to Show Cause [Dkt. #29]. Following Plaintiff Lance Schoening's previous Motion to Dismiss [Dkt. #23], the Court stayed these proceedings [Dkt. #26] and subsequently issued a statistical termination of the case [Dkt. #28].

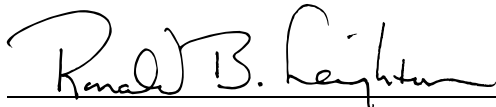
In his Motion to Dismiss, Mr. Schoening asserted that compliance with discovery requests would force him to waive his Fifth Amendment privilege against self-incrimination. He also indicated that at some indeterminate point in the future he would be able to comply without jeopardizing that right. Defendant's response [Dkt. #24] voiced concern that Mr. Schoening's true motivation was to destroy evidence following dismissal. The Court attempted to alleviate the concerns of both parties by striking the Motion

1 to Dismiss and staying the proceedings [Dkt. #26]. That order, however, was based on the erroneous
2 belief that there was and is a pending criminal charge against Mr. Schoening. Defendant's Motion for
3 Order to Show Cause and Mr. Schoening's Response establish that there are not, in fact, any pending
4 criminal actions against Mr. Schoening.¹ While it is true that Mr. Schoening cannot be required to abandon
5 one constitutional right in order to assert another, he will not be permitted to use the Court as a vehicle of
6 preservation for his civil case, while simultaneously shielding himself from criminal liability. *Wehling v.*
7 *Columbia Broadcasting Sys.*, 608 F.2d 1084, 1088 (5th Cir. 1979). For this reason, the stay previously
8 entered [Dkt. #26] is DISSOLVED.

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11 Mr. Schoening's Amended Complaint [Dkt. #14] and a Joint Status Report signed by both parties
12 [Dkt. #20] indicate that Plaintiff is no longer seeking monetary damages. His remaining contention is that
13 RCW 9.68A.090 is facially unconstitutional. The Court has already established that Mr. Schoening has
14 standing to bring this claim, and he is not challenging the statute as-applied. Therefore, the statute's
15 constitutionality is an issue that is ripe now. It is not necessary to resolve Defendant's discovery request at
16 this time.

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18 As requested in the Joint Status Report [Dkt. #20], this issue will be decided on dispositive
19 motions. The parties' opening briefs are due March 20, 2009, and responses are due March 27, 2009. No
20 replies will be submitted unless ordered by the Court. The Court will schedule oral argument, if required,
21 after briefing is complete.

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23 Dated this 23rd day of February, 2009.

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26 RONALD B. LEIGHTON
27 UNITED STATES DISTRICT JUDGE

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1¹Mr. Schoening is under a criminal indictment for failure to register as a sex-offender that is on pre-trial diversion. That matter, as identified by Mr. Schoening, has no bearing on this order. [Dkt. #30].